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KING COUNTY WASHINGTON

AUG 26 2022

SUPERIOR COURT CLERK

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

12536 RENTON AVE LLC,

Defendant.

NO. **22-2-13766-5 SEA**

PROSPECTIVE PURCHASER  
CONSENT DECREE

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## I. INTRODUCTION

1. The mutual objectives of the State of Washington, Department of Ecology (Ecology) and 12536 Renton Ave LLC, (12536 Renton Ave LLC or Defendant) (collectively, the Parties) under this Decree are to (1) resolve the potential liability of 12536 Renton Ave LLC for contamination at the Boathouse Inc. Renton Skyway (Site) arising from a release(s) or threatened release(s) of hazardous substances, in advance of 12536 Renton Ave LLC obtaining an ownership interest in real property at the Site, and (2) to facilitate the implementation of a remedial action at the Site, so it may be redeveloped and reused as the Skyway Towncenter project, a mixed affordable rental and affordable condominium ownership housing project (Project). The Project will provide approximately 254 total units: 71 to 94 units of affordable rental housing, or 30 percent to 40 percent of the Project units, and approximately 142 to 165 units of affordable lease-to-own condominiums, or 60 percent to 70 percent of the Project units. 12536 Renton Ave LLC is continuing to assess unit numbers according to the King County Code, and anticipates that these unit counts may increase. The Project will also include commercial space. 12536 Renton Ave LLC is a Seattle-based multi-family real estate investor and developer with experience in developing affordable and market housing in economically disadvantaged areas of King County. This Decree requires 12536 Renton Ave LLC to complete a Remedial Investigation and Feasibility Study (RI/FS), develop a draft Cleanup Action Plan (dCAP), and implement the remedial actions contained in the final Cleanup Action Plan (CAP), pursuant to the Schedule in Exhibit C. Ecology has determined that these actions are necessary to protect human health and the environment.

2. The Complaint in this action is being filed simultaneously with this Decree. An Answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the Parties wish to resolve the issues raised by Ecology's Complaint. In addition, the Parties agree that settlement of these matters without litigation is reasonable and in the public interest, and that entry of this Decree is the most appropriate means of resolving these matters.

3. By signing this Decree, the Parties agree to its entry and agree to be bound by its terms.

4. By entering into this Decree, the Parties do not intend to discharge non-settling parties from any liability they may have with respect to matters alleged in the Complaint. The Parties retain the right to seek reimbursement, in whole or in part, from any liable persons for sums expended under this Decree.

5. This Decree shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an admission of any facts; provided, however, that Defendant(s) shall not challenge the authority of the Attorney General and Ecology to enforce this Decree.

6. The Court is fully advised of the reasons for entry of this Decree, and good cause having been shown:

Now, therefore, it is HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

## II. JURISDICTION

1. This Court has jurisdiction over the subject matter and over the Parties pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.

2. Authority is conferred upon the Washington State Attorney General by RCW 70A.305.040(4)(a) to agree to a settlement with any potentially liable person (PLP) if, after public notice and any required public meeting, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous substances. In addition, under RCW 70A.305.040(5), the Attorney General may agree to a settlement with a person not currently liable for remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided: the settlement will yield substantial new resources to facilitate cleanup; the settlement will expedite remedial action consistent with the rules adopted under MTCA; and Ecology determines based upon available information that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with

remedial actions that may be needed at the Site, or increase health risks to persons at or in the vicinity of the Site. RCW 70A.305.040(4)(b) requires that such a settlement be entered as a consent decree issued by a court of competent jurisdiction.

3. Ecology has determined that a release or threatened release of hazardous substances has occurred at the Site that is the subject of this Decree.

4. The actions to be taken pursuant to this Decree are necessary to protect public health and the environment.

5. 12536 Renton Ave LLC has not been named as a PLP for the Site, and 12536 Renton Ave LLC has certified under Section IX (Certification of Defendant) that it is not currently liable for the Site under MTCA. 12536 Renton Ave LLC expects to close and acquire two parcels pursuant to Purchase and Sale Agreements no later than August 30, 2022. These parcels comprise, or likely comprise, a portion of the Site. 12536 Renton Ave LLC will incur potential liability under RCW 70A.305.040(1)(a) at the time it acquires an interest in these parcels at the Site for performing remedial actions or paying remedial costs incurred by Ecology or third parties resulting from past releases or threatened releases of hazardous substances at the Site. This Decree settles 12536 Renton Ave LLC's liability as described herein for this Site upon it obtaining an ownership interest in the parcels.

6. 12536 Renton Ave LLC intends to redevelop the Site for the Project, as described in this Decree.

7. Ecology finds that this Decree and/or the remedial actions required by the Decree: will yield substantial new resources to facilitate cleanup of the Site; will lead to a more expeditious cleanup of hazardous substances at the Site in compliance with cleanup standards established under RCW 70A.305.030(2)(e) and WAC 173-340; will promote the public interest by facilitating the redevelopment or reuse of the Site; will not be likely to contribute to the existing release or threatened release at the Site; interfere with remedial actions that may be needed at the Site; or increase health risks to person at or in the vicinity of the Site.

8. This Decree has been subject to public notice and comment.

9. 12536 Renton Ave LLC has agreed to undertake the actions specified in this Decree and consents to the entry of this Decree under MTCA.

### III. PARTIES BOUND

1. This Decree shall apply to and be binding upon the Parties to this Decree, their successors and assigns. The undersigned representative of each party hereby certifies that they are fully authorized to enter into this Decree and to execute and legally bind such party to comply with this Decree. 12536 Renton Ave LLC agrees to undertake all actions required by the terms and conditions of this Decree. No change in ownership or corporate status shall alter 12536 Renton Ave LLC's responsibility under this Decree. 12536 Renton Ave LLC shall provide a copy of this Decree to all agents, contractors, and subcontractors retained to perform work required by this Decree, and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Decree.

### IV. DEFINITIONS

1. Unless otherwise specified herein, all definitions in RCW 70A.305.020, and WAC 173-340 shall control the meanings of the terms in this Decree.

A. Site: The Site is referred to as Boathouse Inc. Renton Skyway, Facility Site ID No. 56652786 and Cleanup Site ID No. 567. The Site is generally located at 12536 Renton Avenue S, in the unincorporated King County, Washington community of Skyway. The Site is undefined but likely comprises approximately 1.2 acres and includes all areas where contamination has come to be located from historic releases during former operations, including the former Ken's Skyway Cleaners. The Site constitutes a facility under RCW 70A.305.020(8). The Site is defined by where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located. The definition of the Site will be complete after further characterization and investigation, pursuant to WAC 340-350.

B. Prospective Purchaser Consent Decree or Decree: Refers to this Prospective Purchaser Consent Decree and each of the exhibits to this Decree. All exhibits are integral and enforceable parts of this Prospective Purchaser Consent Decree.

C. Properties: Refers to the parcels that 12536 Renton Ave LLC will acquire for the project and as described in Exhibit B (Properties Legal Descriptions). The Properties consist of King County Parcels 023100-0012, 023100-0005 (the North Parcels) owned by LD II LLC and associated with 12536 Renton Avenue S address, and 023100-0011 (the South Parcel) owned by Thai Investments, LLC associated with 12600 Renton Avenue S address. The project will also include a fourth parcel (7812801986) which does not have an address and is associated with operations from the other parcels listed above. The parcel addresses and legal descriptions of the Properties are attached as Exhibit B. The Properties comprise, or likely comprise, portions of the Site.

D. Defendant: Refers to 12536 Renton Ave LLC.

E. Parties: Refers to the State of Washington, Department of Ecology and 12536 Renton Ave LLC.

F. Redevelopment: Refers to construction activity that improves property for conversion to a new use. Such new uses include, but are not limited to, affordable rental housing, affordable ownership housing and mixed commercial use. "Redevelopment" does not refer to any remedial action, including building demolition necessary to conduct remedial activities or construction activity that also serves as a remedial action (e.g., soil excavation to remove or access contaminated soil).

## V. FINDINGS OF FACT

1. Ecology makes the following findings of fact without any express or implied admissions of such facts by 12536 Renton Ave LLC.

A. Based upon factors currently known to Ecology, the Site is generally located at 12536 and 12600 Renton Avenue S, in the unincorporated King County,

Washington community of Skyway as shown in the General Location Diagram (Exhibit A). The nature and extent of the release(s) and the Site will be further defined by the RI and the CAP.

B. 12536 Renton Ave LLC is under contract to close on the Properties no later than August 30, 2022.

C. The former Ken's Skyway Cleaners operated a dry-cleaning business from approximately 1966 until approximately 2005 at the 023100-0012 parcel and a former gas station operated on the 023100-0005 north parcel. The North Parcels are currently used as a strip mall hosting several businesses, including a nail salon, and as a parking lot. The South Parcel, located at 12600 Renton Avenue S (0231000011), was used as a grocery store in the 1950s until the mid-1990s. This property is currently used by a drive-through espresso stand and houses the Holy Temple Evangelistic Center. The fourth parcel (7812801986) runs perpendicular to the above parcels and has been used by the operations at the adjacent properties.

D. Contamination at the Site is likely related to the former Ken's Skyway Cleaners. Additional sources and/or releases may be identified during further investigations. Sampling from previous environmental investigations at the Site demonstrate that Tetrachloroethene (PCE) is present above MTCA Method A cleanup levels in soil and groundwater, Trichloroethene (TCE), and Vinyl Chloride (VC) are present in groundwater above MTCA Method A cleanup levels in groundwater, Cis- 1,2 dichloroethene (DCE) is present in groundwater above the MTCA Method B Non-Carcinogen Standard Formula Value, and PCE, TCE and VC are likely present in soil gas above their MTCA Method B Screening Levels based on groundwater sampling results. These hazardous substances have been, and may continue to be, released at the Site into the environment including to soil, soil gas, and groundwater.



E. A release at the Site was first reported to Ecology in 1999. Previous investigations at the Site include an Environmental Site Characterization (Landau, 1999); Groundwater Monitoring Well Sampling (Riley Group, 2013), a Phase I Environmental Site Assessment (Adapt, 2018), and a Limited Phase II Screen (Adapt, 2019). The Site was enrolled in Ecology's Voluntary Cleanup Program in 2002 and it appears that a soil vapor extraction system was in operation at the Site in 2006. Ecology terminated the Site from the VCP in 2007 due to inactivity (Ecology, 2015).

F. Ecology notified LD II LLC that it was a potentially liable party (PLP) via letter dated August 12, 2020. After considering comments from LD II LLC, Ecology made a final determination that LD II LLC is a PLP for the Site on October 29, 2020.

G. Ecology has assigned the Site an overall priority ranking of 3 pursuant to MTCA.

H. The Site is within the Skyway-West Hill Subarea Plan, which is currently in the process of a land use and zoning amendment. The parcels that comprise the Properties are proposed to be renamed the Skyway Business District with a proposed new zoning named "Unincorporated Activity Center" by King County. This would amend the land use designation from Community Business Center, Urban Residential High, and Urban Residential Medium to Unincorporated Activity Center on parcels in the Skyway Business District, high- and medium-residential areas in the vicinity, and surrounding Skyway Park. This designation will allow for mix-used multi-family and multifunctional development that will support density for housing and businesses.

## **VI. WORK TO BE PERFORMED**

1. This Decree contains requirements designed to protect human health and the environment from the known release, or threatened release, of hazardous substances at, on, or from the Site. All remedial action(s) conducted by 12536 Renton Ave LLC at the Site shall be done in accordance with WAC 173-340.

2. 12536 Renton Ave LLC shall complete a Remedial Investigation (RI) and Feasibility Study (FS), a draft CAP, and implement the final CAP, according to the schedule contained therein. The RI, FS, and draft CAP must be completed in accordance with the Scope of Work and Schedule attached to this Decree (Exhibit C). Following Ecology's approval of the draft CAP as a public review document, the draft CAP shall be subject to public comment. Ecology may make changes to the draft CAP to reflect comments or concerns raised in the public comment period, and then Ecology will issue the final CAP.

3. Following Ecology issuance of the final CAP, 12536 Renton Ave LLC shall implement that CAP subject to this Decree's Schedule and any additional schedule requirements in the CAP. The Decree will be amended to add the final CAP as an exhibit.

4. 12536 Renton Ave LLC will conduct the remedial actions throughout the Site, as described in the Scope of Work and the final CAP, once issued by Ecology. In addition to the required remediation throughout the Site, the Properties will be remediated to residential cleanup levels and redeveloped with dedicated rental units restricted for affordable housing for a minimum of 30 years, and affordable ownership pathway condominiums along with commercial space, as provided in this Decree, consistent with MTCA and its implementing regulations, WAC 173-340, and applicable King County zoning provisions and comprehensive plan designations.

5. Until the CAP is final and the Schedule requires implementation, no redevelopment of the parcels within the Properties may proceed; provided, that Ecology may allow for redevelopment to occur on a property-specific basis if: (1) a final Cleanup Action Plan (CAP) for the Property has been issued by Ecology; (2) the property-specific redevelopment is accompanied by a remedial action that implements Ecology's selected cleanup action for that portion of the Site; and (3) Ecology determines that proceeding with the property-specific redevelopment and remedial action: (a) is consistent with, and will not preclude, complicate, or

render more expensive the final cleanup action for the Site as a whole; and (b) will not exacerbate the known contamination/release or result in recontamination of the Properties.

6. Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a site hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Any Party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, 12536 Renton Ave LLC shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). The 12536 Renton Ave LLC shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and 12536 Renton Ave LLC is required to conduct the interim action in accordance with the approved Interim Action Work Plan. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself

7. All plans or other deliverables submitted by 12536 Renton Ave LLC for Ecology's review and approval under the Scope of Work and Schedule (Exhibit C) shall, upon Ecology's approval, become integral and enforceable parts of this Decree. This includes the final CAP and any additional deliverables identified in the final CAP, according to any schedule or scope of work contained therein.

8. If 12536 Renton Ave LLC learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical

concentrations in soil or groundwater, 12536 Renton Ave LLC, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

9. Pursuant to WAC 173-340-440(11), and if required by the final CAP, 12536 Renton Ave LLC shall maintain sufficient and adequate financial assurance mechanisms to cover all costs associated with the operation and maintenance of the remedial action at the Site, including institutional controls, compliance monitoring, and corrective measures.

A. Within sixty (60) days of Ecology's issuance of a final CAP, if the CAP requires engineered and/or institutional controls that require financial assistance under WAC 173-340-440(11), 12536 Renton Ave LLC shall submit to Ecology for review and approval an estimate of the costs associated with the operation and maintenance of the remedial action at the Site that it will incur in carrying out the terms of this Decree. Within sixty (60) days after Ecology approves the aforementioned cost estimate, 12536 Renton Ave LLC shall provide proof of financial assurances sufficient to cover those costs in a form acceptable to Ecology.

B. If financial assurance coverage is required, 12536 Renton Ave LLC shall adjust the financial assurance coverage and provide Ecology's project coordinator with documentation of the updated financial assurance for:

i. Inflation, annually, within thirty (30) days of the anniversary date of the entry of this Decree; or if applicable, the modified anniversary date established in accordance with this section, or if applicable, ninety (90) days after the close of 12536 Renton Ave LLC's fiscal year if the financial test or corporate guarantee is used.

ii. Changes in cost estimates, within thirty (30) days of issuance of Ecology's approval of a modification or revision to the CAP that result in

increases to the cost or expected duration of remedial actions. Any adjustments for inflation since the most recent preceding anniversary date shall be made concurrent with adjustments for changes in cost estimates. The issuance of Ecology's approval of a revised or modified CAP will revise the anniversary date established under this section to become the date of issuance of such revised or modified CAP.

10. Environmental (Restrictive) Covenants will be used to implement the institutional controls for the Site, if required by the CAP, and the affordable housing requirements of this Decree.

A. In addition to any restrictions related to environmental conditions, to be further described in the final CAP, the Environmental (Restrictive) Covenant to be recorded shall require that the project will provide affordable housing units. By agreement of the project coordinators, subject to the requirement of any applicable grant agreement between the Parties, and prior to the recording of any Covenant required by the Decree, the Parties will further define: (1) the specific requirements for the number of affordable housing units that will be subject to the Covenant (a minimum of 20 percent of all housing units shall be affordable housing rental units); (2) the term of land use restriction (a minimum of 30 years); and (3) the instrument(s) required to be recorded to restrict land use to the requirements of this section. The affordable housing requirements shall, through this Decree, attach to 12536 Renton Ave LLC prior to the above-referenced Covenants being recorded.

B. In the event that, prior or subsequent to the above-referenced Covenants being recorded, one or more of the parcels is transferred to a successor in interest who is not a party to this Decree, compliance with this Decree's or the Covenant's affordable housing requirements in this section is necessary in order for that successor in interest to enjoy the stay of enforcement provided in RCW 70A.305.040(4)(e). In the event such a

successor in interest fails to comply with the affordable housing requirements, Ecology reserves authority to pursue an action for cost recovery from such successors pursuant to RCW 70A.305.050(3), to the extent grant funds have been expended at the Site.

C. In consultation with 12536 Renton Ave LLC, Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology and 12536 Renton Ave LLC.

D. After approval by Ecology, 12536 Renton Ave LLC shall record the Environmental (Restrictive) Covenant for affected properties it owns with the office of the King County Auditor as detailed in the CAP. 12536 Renton Ave LLC shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

E. If provided for in the final CAP, and if part of the remedial action for the Site, institutional controls may be required on properties not owned by 12536 Renton Ave LLC. 12536 Renton Ave LLC will take good faith efforts to engage with the owners of each affected property so that an Ecology-approved Environmental (Restrictive) Covenant is recorded as detailed in the CAP. Upon a showing that 12536 Renton Ave LLC has made a good faith effort to secure an Environmental (Restrictive) Covenant for an affected property and failed to do so, Ecology may provide assistance to 12536 Renton Ave LLC. If required by the final CAP, 12536 Renton Ave LLC shall provide Ecology with the original recorded Environmental (Restrictive) Covenant within thirty (30) days of the recording date.

11. Unless otherwise directed by Ecology, 12536 Renton Ave LLC shall submit to Ecology written monthly Progress Reports that describe the actions taken during the previous month to implement the requirements of this Decree. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Decree.

Unless otherwise specified in writing by Ecology, Progress Reports and any other documents submitted pursuant to this Decree shall be sent by electronic mail to Ecology's project coordinator. The Progress Reports shall include the following:

- A. A list of on-site activities that have taken place during the month.
- B. Description of any sample results that deviate from the norm.
- C. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.
- D. Description of all deviations from the Scope of Work and Schedule (Exhibit C) during the current month and any planned deviations in the upcoming month.
- E. For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.
- F. All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.
- G. A list of planned activities for the upcoming month.

12. Except in the case of an emergency, 12536 Renton Ave LLC agrees not to perform any remedial actions at the Site outside the scope of this Decree without prior written approval of Ecology. In the case of an emergency, 12536 Renton Ave LLC must notify Ecology of the event and remedial action(s) as soon as practical, but no later than twenty-four (24) hours after discovery of the emergency.

#### **VII. DESIGNATED PROJECT COORDINATORS**

1. The project coordinator for Ecology is:

Sandra Matthews  
PO Box 330316, Shoreline, WA 98133-9716  
425-223-1999  
smat461@ecy.wa.gov

2. The project coordinator for 12536 Renton Ave LLC is:

Dave Cook, LG, CPG  
Aspect Consulting, 710 2nd Avenue, Suite 550, Seattle, WA 98104  
206-838-5837  
dcook@aspectconsulting.com

3. Each project coordinator shall be responsible for overseeing the implementation of this Decree. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and 12536 Renton Ave LLC and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Decree.

4. Any party may change its respective project coordinator. Written notification shall be given to the other party at least ten (10) calendar days prior to the change.

#### **VIII. PERFORMANCE**

1. Except as otherwise provided for by RCW 18.43 and 18.220, all geologic and hydrogeologic work performed pursuant to this Decree shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington.

2. Except as otherwise provided for by RCW 18.43.130, all engineering work performed pursuant to this Decree shall be under the direct supervision of a professional engineer registered by the State of Washington.

3. Except as otherwise provided for by RCW 18.43.130, all construction work performed pursuant to this Decree shall be under the direct supervision of a professional engineer registered by the State of Washington or a qualified technician under the direct supervision of a professional engineer registered by the State of Washington.



4. As required by RCW 18.43 and 18.220, any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional.

5. 12536 Renton Ave LLC shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s) and subcontractor(s), and other key personnel to be used in carrying out the terms of this Decree, in advance of their involvement at the Site.

#### **IX. CERTIFICATION OF DEFENDANT**

1. 12536 Renton Ave LLC represents and certifies that, to the best of its knowledge and belief, it has fully and accurately disclosed to Ecology the information currently in its possession or control that relates to the environmental conditions at and in the vicinity of the Site, or to 12536 Renton Ave LLC's right and title thereto.

2. 12536 Renton Ave LLC represents and certifies that it did not cause or contribute to a release or threatened release of hazardous substances at the Site and is not otherwise currently potentially liable for the Site under RCW 70A.305.040(1).

#### **X. ACCESS**

1. Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that 12536 Renton Ave LLC either owns, controls, or has access rights to at all reasonable times for the purposes of, *inter alia*: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Decree; reviewing 12536 Renton Ave LLC's progress in carrying out the terms of this Decree; conducting such tests or collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Decree; and verifying the data submitted to Ecology by 12536 Renton Ave LLC.

2. Nothing in this Decree is intended by 12536 Renton Ave LLC to waive any right it may have under applicable law to limit disclosure of documents protected by the attorney work-product privilege and/or the attorney-client privilege. If 12536 Renton Ave LLC withholds

any requested records based on an assertion of privilege, it shall provide Ecology with a privilege log specifying the records withheld and the applicable privilege. No Site-related data collected pursuant to this Decree shall be considered privileged.

3. 12536 Renton Ave LLC shall make all reasonable efforts to secure access rights for those properties within the Site not owned or controlled by 12536 Renton Ave LLC where remedial activities or investigations will be performed pursuant to this Decree.

4. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by 12536 Renton Ave LLC unless an emergency prevents such notice. All Parties who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

#### **XI. SAMPLING, DATA SUBMITTAL, AND AVAILABILITY**

1. With respect to the implementation of this Decree, 12536 Renton Ave LLC shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology by submitting data as detailed in this section. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with paragraph 11 of Section VI (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

2. If requested by Ecology, 12536 Renton Ave LLC shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by 12536 Renton Ave LLC pursuant to the implementation of this Decree. 12536 Renton Ave LLC shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow 12536 Renton Ave LLC and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the

implementation of this Decree, provided that doing so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section IX (Access), Ecology shall notify 12536 Renton Ave LLC prior to any sample collection activity unless an emergency prevents such notice.

3. In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

## XII. ACCESS TO INFORMATION

1. 12536 Renton Ave LLC shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within 12536 Renton Ave LLC's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. 12536 Renton Ave LLC shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

2. Nothing in this Decree is intended to waive any right 12536 Renton Ave LLC may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If 12536 Renton Ave LLC withholds any requested Records based on an assertion of privilege, 12536 Renton Ave LLC shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Decree shall be considered privileged, including: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or engineering data, or the portion

of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that Defendants are required to create or generate pursuant to this Order.

3. Notwithstanding any provision of this Order, Ecology retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under any other applicable statutes or regulations.

### **XIII. RETENTION OF RECORDS**

During the pendency of this Decree, and for ten (10) years from the date this Decree is no longer in effect as provided in Section XXVI (Duration of Decree), 12536 Renton Ave LLC shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Decree and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors. Upon request of Ecology, 12536 Renton Ave LLC shall make all records available to Ecology and allow access for review within a reasonable time.

### **XIV. TRANSFER OF INTEREST IN PROPERTY**

1. No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by 12536 Renton Ave LLC without provision for continued operation and maintenance of any containment system, treatment system, and/or monitoring system installed or implemented pursuant to this Decree.

2. Prior to 12536 Renton Ave LLC's transfer of any interest in all or any portion of the Site, and during the effective period of this Decree, 12536 Renton Ave LLC shall provide a copy of this Decree to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, 12536 Renton Ave LLC shall notify Ecology of said transfer. Upon its transfer of any interest, 12536 Renton Ave LLC shall notify all transferees of the restrictions on the activities and uses of the property under this Decree and incorporate any such use restrictions into the transfer documents.

## XV. RESOLUTION OF DISPUTES

1. In the event that 12536 Renton Ave LLC elects to invoke dispute resolution, 12536 Renton Ave LLC must utilize the procedure set forth below.

A. Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), 12536 Renton Ave LLC has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

B. The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those 14 calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; 12536 Renton Ave LLC's position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

C. 12536 Renton Ave LLC may then request regional management review of the dispute. 12536 Renton Ave LLC must submit this request (Formal Dispute Notice) in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; the disputing Party's position with respect to the dispute; and the information relied upon to support its position.

D. The Section Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal Dispute Notice.

E. If 12536 Renton Ave LLC finds Ecology's Regional Section Manager's decision of the disputed matter unacceptable, 12536 Renton Ave LLC may then request final management review of that decision. 12536 Renton Ave LLC must submit this request (Final Review Request) in writing to the Toxics Cleanup Program Manager within seven (7) calendar days of 12536 Renton Ave LLC's receipt of the Decision on Dispute. The Final Review Request shall include a written statement of dispute setting forth: the nature of the dispute; 12536 Renton Ave LLC's position with respect to the dispute; and the information relied upon to support its position.

F. Ecology's Toxics Cleanup Program Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute (Final Decision on Dispute) within thirty (30) calendar days of receipt of the Final Review Request. The Toxics Cleanup Program Manager's decision shall be Ecology's final decision on the disputed matter.

2. If Ecology's Final Decision on Dispute is unacceptable to 12536 Renton Ave LLC, 12536 Renton Ave LLC has the right to submit the dispute to the Court for resolution. The Parties agree that one judge should retain jurisdiction over this case and shall, as necessary, resolve any dispute arising under this Decree. Under RCW 70A.305.070, Ecology's investigative and remedial decisions shall be upheld unless they are arbitrary and capricious.

3. The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used. Where either party utilizes the dispute resolution process in bad faith or for purposes of delay, the other party may seek sanctions.

4. Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Decree, unless Ecology agrees in writing to a schedule extension or the Court so orders.

5. In case of a dispute, failure to either proceed with the work required by this Decree or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section XXIII (Implementation of Remedial Action).

#### **XVI. AMENDMENT OF DECREE**

1. The Parties may agree to minor changes to the work to be performed without formally amending this Decree. Minor changes will be documented in writing by Ecology.

2. Substantial changes to the work to be performed shall require formal amendment of this Decree. This Decree may only be formally amended by a written stipulation among the Parties that is entered by the Court, or by order of the Court. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment. Such amendment shall become effective upon entry by the Court. Agreement to amend the Decree shall not be unreasonably withheld by any party.

3. When requesting a change to the Decree, 12536 Renton Ave LLC shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Decree must be formally amended. Reasons for the disapproval of a proposed change to this Decree shall be stated in writing. If Ecology does not agree to the requested change, the disagreement may be addressed through the dispute resolution procedures described in Section XIV (Resolution of Disputes).

#### **XVII. EXTENSION OF SCHEDULE**

1. 12536 Renton Ave LLC's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

- A. The deadline that is sought to be extended.
- B. The length of the extension sought.
- C. The reason(s) for the extension.
- D. Any related deadline or schedule that would be affected if the extension were granted.

2. The burden shall be on 12536 Renton Ave LLC to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- A. Circumstances beyond the reasonable control and despite the due diligence of 12536 Renton Ave LLC including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by 12536 Renton Ave LLC.
- B. A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.
- C. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- D. Endangerment as described in Section XVII (Endangerment).

3. However, neither increased costs of performance of the terms of this Decree nor changed economic circumstances shall be considered circumstances beyond the reasonable control of 12536 Renton Ave LLC.

4. Ecology shall act upon any 12536 Renton Ave LLC written request for extension in a timely fashion. Ecology shall give 12536 Renton Ave LLC written notification of any extensions granted pursuant to this Decree. A requested extension shall not be effective until approved by Ecology or, if required, by the Court. Unless the extension is a substantial change,



it shall not be necessary to amend this Decree pursuant to Section XIV (Amendment of Decree) when a schedule extension is granted.

5. At 12536 Renton Ave LLC's request an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

- A. Delays in the issuance of a necessary permit that was applied for in a timely manner.
- B. Other circumstances deemed exceptional or extraordinary by Ecology.
- C. Endangerment as described in Section XVII (Endangerment).

#### **XVIII. ENDANGERMENT**

1. In the event Ecology determines that any activity being performed at the Site under this Decree is creating or has the potential to create a danger to human health or the environment, Ecology may direct 12536 Renton Ave LLC to cease such activities for such period of time as it deems necessary to abate the danger. 12536 Renton Ave LLC shall immediately comply with such direction.

2. In the event 12536 Renton Ave LLC determines that any activity being performed at the Site under this Decree is creating or has the potential to create a danger to human health or the environment, 12536 Renton Ave LLC may cease such activities. 12536 Renton Ave LLC shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, 12536 Renton Ave LLC shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with 12536 Renton Ave LLC's cessation of activities, it may direct 12536 Renton Ave LLC to resume such activities.

3. If Ecology concurs with or orders a work stoppage pursuant to this section, 12536 Renton Ave LLC's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well

as the time for any other work dependent upon such activities, shall be extended, in accordance with Section XVI (Extension of Schedule), for such period of time as Ecology determines is reasonable under the circumstances.

4. Nothing in this Decree shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

### **XIX. COVENANT NOT TO SUE**

1. Covenant Not to Sue: In consideration of 12536 Renton Ave LLC's compliance with the terms and conditions of this Decree, Ecology covenants not to institute legal or administrative actions against 12536 Renton Ave LLC regarding the release or threatened release of hazardous substances at the Site. This Decree covers the Site that will be specifically identified and described within the final CAP, and those hazardous substances that Ecology knows are located at the Site, as identified within the final CAP. For reference, the general location of the Site, as known at the time this Decree is entered, is identified in the General Location Diagram (Exhibit A). This Covenant Not to Sue does not cover any other hazardous substance(s) or area. Ecology retains all of its authority relative to any hazardous substance(s) or area not covered by this Decree.

This Covenant Not to Sue shall have no applicability whatsoever to:

- A. Criminal liability.
- B. Liability for damages to natural resources.
- C. Any Ecology action, including cost recovery, against PLPs not a party to this Decree.

2. Pursuant to RCW 70A.305.040(4)(c), the Court shall amend this Covenant Not to Sue if factors not known at the time of entry of this Decree are discovered and present a previously unknown threat to human health or the environment.

3. Reopeners: Ecology specifically reserves the right to institute legal or administrative action against 12536 Renton Ave LLC to require it to perform additional remedial

actions at the Site and to pursue appropriate cost recovery, pursuant to RCW 70A.305.050, under any of the following circumstances:

A. Upon 12536 Renton Ave LLC's failure to meet the requirements of this Decree.

B. Failure of the remedial action to meet the cleanup standards identified in the CAP.

C. Upon Ecology's determination that remedial action beyond the terms of this Decree is necessary to abate an imminent and substantial endangerment to human health or the environment.

D. Upon the availability of information previously unknown to Ecology regarding Site factors including the nature, quantity, migration, pathway, or mobility of hazardous substances, and Ecology's determination, in light of this information, that further remedial action is necessary at the Site to protect human health or the environment.

E. Upon Ecology's determination that additional remedial actions are necessary to achieve cleanup standards within the reasonable restoration time frame set forth in the CAP.

4. Except in the case of an emergency, prior to instituting legal or administrative action against 12536 Renton Ave LLC pursuant to this section, Ecology shall provide 12536 Renton Ave LLC with fifteen (15) calendar days' notice of such action.

## **XX. CONTRIBUTION PROTECTION**

1. With regard to claims for contribution against 12536 Renton Ave LLC, the Parties agree that 12536 Renton Ave LLC is entitled to protection against claims for contribution for matters addressed in this Decree as provided by RCW 70A.305.040(4)(d).

## XXI. INDEMNIFICATION

1. 12536 Renton Ave LLC agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property to the extent arising from or on account of acts or omissions of 12536 Renton Ave LLC, its officers, employees, agents, or contractors in entering into and implementing this Decree. However, 12536 Renton Ave LLC shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Decree.

## XXII. COMPLIANCE WITH APPLICABLE LAWS

1. *Applicable Law.* All actions carried out by 12536 Renton Ave LLC pursuant to this Decree shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits, except as provided in RCW 70A.305.090. At this time, no federal, state, or local requirements have been identified as being applicable to the actions required by this Decree. 12536 Renton Ave LLC has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Decree, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or 12536 Renton Ave LLC, Ecology will document in writing if they are applicable to actions carried out pursuant to this Decree, and 12536 Renton Ave LLC must implement those requirements.

2. *Relevant and Appropriate Requirements.* All actions carried out by 12536 Renton Ave LLC pursuant to this Decree shall be done in accordance with relevant and appropriate requirements identified by Ecology. At this time, no relevant and appropriate requirements have been identified as being applicable to the actions required by this Decree. If additional relevant and appropriate requirements are identified by Ecology or 12536 Renton Ave LLC, Ecology will

document in writing if they are applicable to actions carried out pursuant to this Decree and 12536 Renton Ave LLC must implement those requirements.

3. Pursuant to RCW 70A.305.090(1), 12536 Renton Ave LLC may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, 12536 Renton Ave LLC shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Decree to enforce those local government permits and/or approvals. At this time, no state or local permits or approvals have been identified as being applicable but procedurally exempt under this section.

4. 12536 Renton Ave LLC has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Decree. In the event either Ecology or 12536 Renton Ave LLC determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Decree, it shall promptly notify the other party of its determination. Ecology shall determine whether Ecology or 12536 Renton Ave LLC shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, 12536 Renton Ave LLC shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by 12536 Renton Ave LLC and on how 12536 Renton Ave LLC must meet those requirements. Ecology shall inform 12536 Renton Ave LLC in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Decree. 12536 Renton Ave LLC shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

5. Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and 12536 Renton Ave LLC shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

### **XXIII. REMEDIAL ACTION COSTS**

1. 12536 Renton Ave LLC shall pay to Ecology costs incurred by Ecology pursuant to this Decree and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Decree preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the entry of this Decree. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all costs incurred, 12536 Renton Ave LLC shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

2. In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

#### **XXIV. IMPLEMENTATION OF REMEDIAL ACTION**

1. If Ecology determines that 12536 Renton Ave LLC has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to 12536 Renton Ave LLC, perform any or all portions of the remedial action or at Ecology's discretion allow 12536 Renton Ave LLC opportunity to correct. In an emergency, Ecology is not required to provide notice to 12536 Renton Ave LLC, or an opportunity for dispute resolution. 12536 Renton Ave LLC shall reimburse Ecology for the costs of doing such work in accordance with Section XXIII (Remedial Action Costs).

2. Except where necessary to abate an emergency or where required by law, 12536 Renton Ave LLC shall not perform any remedial actions at the Site outside those remedial actions required by this Decree to address the contamination that is the subject of this Decree, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section XV (Amendment of Decree). In the event of an emergency, or where actions are taken as required by law, 12536 Renton Ave LLC must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

#### **XXV. PERIODIC REVIEW**

1. If the CAP requires a periodic review under WAC 173-340-420(2), so long as remedial action continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the Site the Parties shall confer regarding the status of the Site and the need, if any, for further remedial action at the Site. Under Section XVIII (Covenant Not to Sue), Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Decree.

## XXVI. PUBLIC PARTICIPATION

1. Ecology shall maintain the responsibility for public participation at the Site. However, 12536 Renton Ave LLC shall cooperate with Ecology, and shall:

A. If agreed to by Ecology, develop appropriate mailing lists, prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

B. Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify 12536 Renton Ave LLC prior to the issuance of all press releases and fact sheets related to remedial action work to be performed at the Site, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. For all press releases, fact sheets, meetings, and other outreach efforts by 12536 Renton Ave LLC that do not receive prior Ecology approval, 12536 Renton Ave LLC shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

C. When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions, or as a presenter.

D. When requested by Ecology, arrange and/or continue information repositories at the following location:

Ecology's Northwest Regional Office  
15700 Dayton Ave N  
Shoreline, WA 98133



King County Library – Skyway  
12601 76th Avenue S  
Seattle, WA 98178

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology’s Northwest Regional Office in Shoreline, Washington.

**XXVII. DURATION OF DECREE**

1. The remedial program required pursuant to this Decree shall be maintained and continued until 12536 Renton Ave LLC has received written notification from Ecology that the requirements of this Decree have been satisfactorily completed. This Decree shall remain in effect until dismissed by the Court. When dismissed, Section XII (Retention of Records), Section XVIII (Covenant Not to Sue), Section XIX (Contribution Protection), Section XX (Indemnification), and Section XXVIII (Claims Against the State) shall survive.

**XXVIII. CLAIMS AGAINST THE STATE**

1. 12536 Renton Ave LLC hereby agrees that it will not seek to recover any costs accrued in implementing the remedial action required by this Decree from the State of Washington or any of its agencies; and further, that 12536 Renton Ave LLC will make no claim against any MTCA account for any costs incurred in implementing this Decree. Except as provided above, however, 12536 Renton Ave LLC expressly reserves its right to seek to recover any costs incurred in implementing this Decree from any other PLP. This section does not limit or address funding that may be provided under WAC 173-322A.

**XXIX. EFFECTIVE DATE**

1. This Decree is effective upon the date it is entered by the Court.

XXX. WITHDRAWAL OF CONSENT

1. If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the option of any party and the accompanying Complaint shall be dismissed without costs and without prejudice. In such an event, no party shall be bound by the requirements of this Decree.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

DocuSigned by:  
*Barry Rogowski*  
6ADC8B7E6EB0424

Barry Rogowski  
Program Manager  
Toxics Cleanup Program  
360-407-4177

Date: August 25, 2022

ROBERT W. FERGUSON  
Attorney General

DocuSigned by:  
*Allyson C. Bazan*  
3A20D97B8AD64D8

Allyson C. Bazan, WSBA #44221  
Assistant Attorney General  
360-586-3589

Date: August 25, 2022

12536 Renton Ave LLC

DocuSigned by:  
*Jaebadian Gardner*  
F3D8BE38089E438

Jaebadian S. Gardner  
Managing Partner  
206-623-1844

Date: August 24, 2022

ENTERED this \_\_\_\_\_ day of 8/26/22 20\_\_\_\_.

**HENRY H. JUDSON**

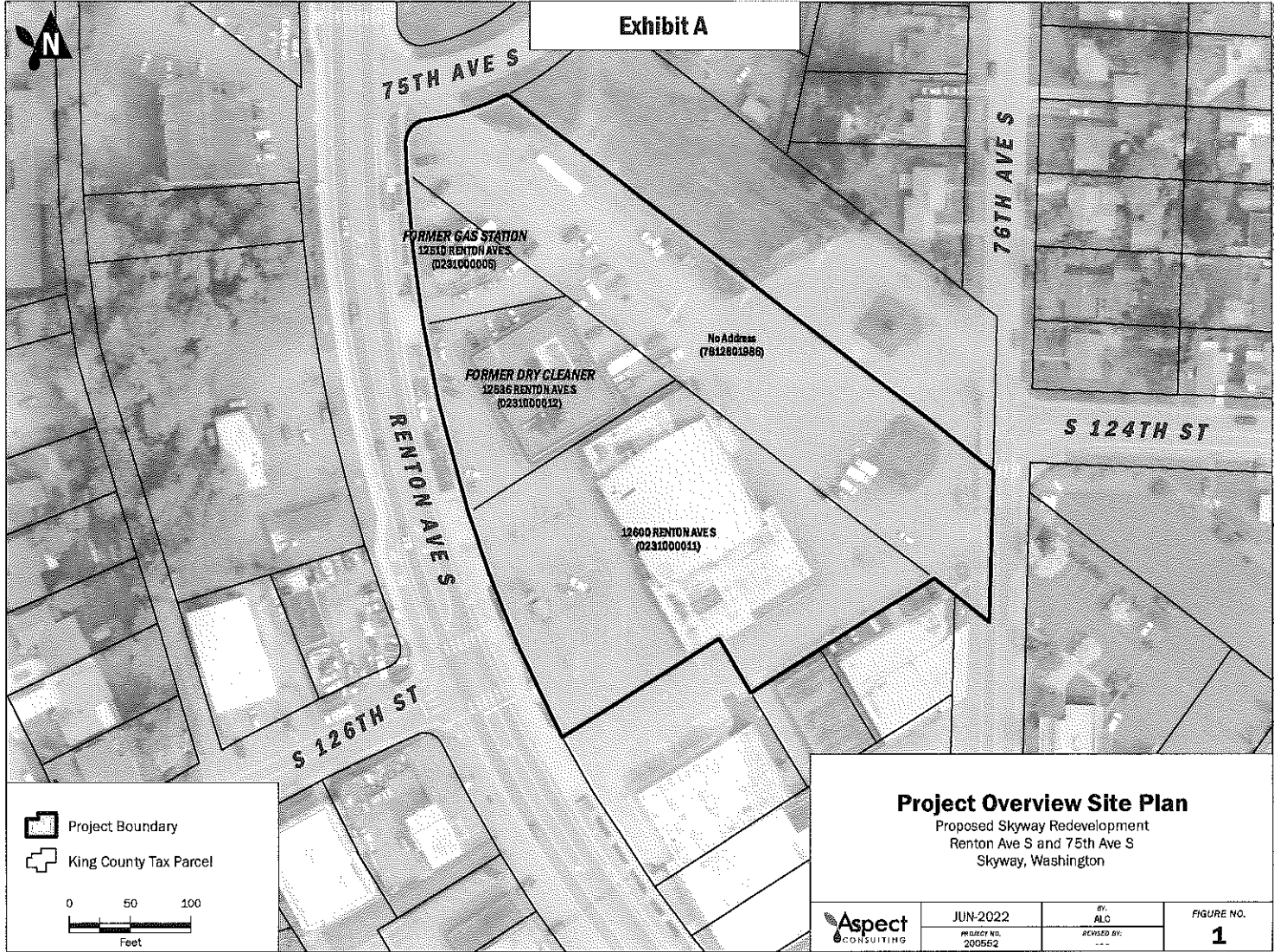
AUG 26 2022

COURT COMMISSIONER

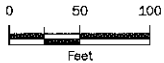
*[Signature]*  
\_\_\_\_\_  
JUDGE  
King County Superior Court

**EXHIBIT A**

## Exhibit A



- Project Boundary
- King County Tax Parcel



Basemap Layer Credits | EagleView Technologies, Inc.

### Project Overview Site Plan

Proposed Skyway Redevelopment  
Renton Ave S and 75th Ave S  
Skyway, Washington

**Aspect**  
CONSULTING

JUN-2022  
PROJECT NO.  
2005E2

BY:  
ALG  
REVISED BY:  
---

FIGURE NO.  
**1**

File Path: G:\projects\2022\2005E2\20220601\20220601\_10001\20220601\_10001\_001.mxd | Date: 2022-06-01 10:00:00 | Project: Skyway Redevelopment | Figure: 1 | Scale: 1"=50' | Author: ALG | Title: Project Overview Site Plan

**EXHIBIT B**

## **EXHIBIT B**

### **Legal Descriptions**

#### **Legal Descriptions for Parcels located at 12600 Renton Avenue and 12400 76th Avenue**

##### **Parcel: 023100-0011**

THE SOUTHEASTERLY 245 FEET OF LOT 2 OF ANGLE CITY ADDITION, AS PER PLAT RECORDED IN VOLUME 40 OF PLATS, PAGE 28, RECORDS OF KING COUNTY AUDITOR; EXCEPT THAT PORTION THEREOF LYING SOUTHERLY AND WESTERLY OF THE FOLLOWING DESCRIBED LINE; BEGINNING AT A POINT WHICH IS NORTH 59° 21' 12" EAST, 148.84 FEET OF THE MOST SOUTHERLY CORNER OF LOT 4 IN SAID PLAT; THENCE NORTH 30° 38' 48" WEST, 140.00 FEET; THENCE SOUTH 59° 21' 12" WEST TO THE WESTERLY LINE OF SAID LOT 2 AND THE TERMINUS OF THE DESCRIBED LINE, SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

##### **Parcel 7812180-1986**

THE 200 FOOT TRACT DESIGNATED "TRANSMISSION LINE RIGHT OF WAY CITY OF SEATTLE" IN SKYWAY PARK ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 40 OF PLATS, PAGES 6 THROUGH 9, INCLUSIVE, IN KING COUNTY, WASHINGTON, LYING EASTERLY OF RENTON AVENUE AND SOUTHEASTERLY OF 75TH AVENUE SOUTH (SOUTH 122ND STREET); TOGETHER WITH ALL THE PORTION DESIGNATED AS "EASEMENT CITY OF SEATTLE TRANSMISSION LINE" IN BLOCK 10 OF SEELYE ADDITION, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 38 OF PLATS, PAGES 34 AND 35 IN KING COUNTY, WASHINGTON EXCEPT THAT PORTION IN 75TH AVENUE SOUTH.

#### **Legal Description for Parcels located at 12500 Renton Avenue South**

##### **Parcel 0231000005 and 0231000012**

LOT 1, ANGEL CITY, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 40 OF PLATS, PAGE 28, IN KING COUNTY, WASHINGTON.

LOT 2, ANGEL CITY, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 40 OF PLATS, PAGE 28, IN KING COUNTY, WASHINGTON; EXCEPT THE SOUTHEASTERLY 245 FEET THEREOF.

**EXHIBIT C**

## SCOPE OF WORK AND SCHEDULE

### PURPOSE

Pursuant to the Prospective Purchaser Consent Decree (PPCD), Gardner Global will complete a Remedial Investigation (RI) and Feasibility Study (FS) for the Site in accordance with the Model Toxics Control Act (MTCA) Regulation (Washington Administrative Code [WAC] 173-340) subject to Washington State Department of Ecology (Ecology) review and approval. Interim actions may be conducted if required or agreed to by Ecology. Following completion of the final RI/FS report a final cleanup remedy will be selected by Ecology for the Site in a Cleanup Action Plan (CAP). Implementation of the remedy will coincide with redevelopment of portions of the Site and the availability of cleanup funds.

Gardner Global shall coordinate with Ecology throughout the RI, FS, draft CAP, and implementation of the cleanup, and shall keep Ecology informed of changes to any Work Plan or other project plans, and of any issues or problems as they develop.

The Scope of Work (SOW) is divided into seven major tasks as follows:

- Task 1. Remedial Investigation Work Plan
- Task 2. Remedial Investigation
- Task 3. Interim Action(s) (if required)
- Task 4. Feasibility Study
- Task 5. State Environmental Policy Act (SEPA) Compliance
- Task 6. Public Participation
- Task 7. DCAP and Implementation of Cleanup

### **TASK 1. REMEDIAL INVESTIGATION WORK PLAN**

Gardner Global began RI activities prior to property acquisition and entry of the PPCD to expedite the remedial process, including:

- *Data Review.* Gardner Global reviewed previous environmental reports
- *Environmental Assessment.* Gardner Global conducted activities related to Phase I and Phase II Environmental Site Assessments

Gardner Global will use data from the steps above as a basis for preparing a Remedial Investigation Work Plan (Work Plan). The Work Plan shall include an overall description and schedule of all RI activities. The Work Plan shall clearly describe the project management strategy for implementing and reporting on RI activities. The responsibility and authority of all organizations and key personnel involved in conducting the RI will be outlined.

A Key Project Meeting (RI Planning Meeting) will be held prior to submittal of the RI Work Plan. The purpose of the RI Planning Meeting is to review requirements for the RI Work Plan and plan



RI fieldwork, discuss the preliminary Conceptual Site Model, and identify project data needs and possible interim actions.

The Work Plan shall describe or reference descriptions of the site history and past investigations, in compliance with WAC 173-340-350. As part of the project background, existing environmental data on site soil, groundwater, and soil vapor will be compiled and evaluated for data gaps. The data gaps will be used as the basis for conducting additional site investigations, if necessary. The Work Plan will also identify specific data collection procedures in a Sampling and Analysis Plan (SAP) and Quality Assurance Project Plan (QAPP) as part of the Work Plan in compliance with WAC 173-340-820 and WAC 173-340-830 for defining the nature and extent of contamination. The PLP(s) will also submit a copy of the Health and Safety Plan (HASP) for the project.

The SAP identifies the proposed number and location of all environmental samples and methods, including soil borings, groundwater monitoring wells, soil, groundwater, stormwater, and catch basin samples, approximate depths, and includes a quality assurance project plan. The SAP will describe the sampling objectives, the rationale for the sampling approach (based upon the identified data gaps), and plans for data use, and shall provide a detailed description of sampling tasks. The SAP shall describe specifications for sample identifiers; sampling equipment; the type, number, and location of samples to be collected; the analyses to be performed; descriptions of sampling equipment and methods to be used; sample documentation; sample containers, collection and handling; data and records management; and schedule.

The PLP(s) or their contractors shall enter all new sampling data generated under this SAP and any other data used to define the Site to Ecology for entry into the Environmental Information Management System (EIM) in accordance with WAC 173-340-840(5) and Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Only validated data will be entered into the EIM database within 30 days of submittal.

The RI Work Plan shall present a strategy to meet the following objectives:

- Evaluate subsurface utilities and their role as preferential pathways for potential contamination migration.
- Further evaluate nature and extent of chlorinated solvents contamination in soil and groundwater at the Site including adjacent properties and City of Seattle's rights-of-way (Renton Ave).
- Delineate the lateral and vertical extent of contaminants in soil and groundwater at and in the vicinity of the Site.
- Delineate the lateral and vertical extent of contamination in soil and groundwater at the Former Gasoline Service Station Parcel and vicinity.
- Assess potential for vapor intrusion in existing buildings located at properties in proximity to the drycleaner. Measure vapor contaminant in the buildings if necessary.
- Determine the nature and extent of "Site" and develop a Conceptual Site Model.

- Collect sufficient RI data to develop cleanup options for affected media at the Site and evaluate the cleanup options through a Feasibility Study.

Gardner Global will provide Ecology with an Agency Review Draft RI Work Plan. Once Ecology reviews and approves the Work Plan, the final comments will be incorporated and the Final Work Plan submitted. The Work Plan shall not be implemented until approved by Ecology. Once approved by Ecology, Gardner Global will implement the Final Work Plan according to the schedule contained in this Exhibit.

## **TASK 2. REMEDIAL INVESTIGATION REPORT**

Gardner Global shall complete an RI Report that meets the requirements of WAC 173-340-350(7) and outlined in Ecology's RI Checklist Publication No. 16-09-006, revised June 2020. The RI Report will document the nature and extent of contamination exceeding preliminary Model Toxics Control Act (MTCA) cleanup levels, and other regulatory requirements. The RI must provide sufficient data and information to document the nature and extent of contamination and to design a cleanup action protective of human health and the environment.

Gardner Global shall provide interim data reports and updates to Ecology as new site data and information become available. Laboratory analysis data shall also be provided in electronic format when it has been validated. Raw laboratory data will be provided to Ecology upon request.

Prior to submittal of the Agency Review Draft RI Report, a Key Project Meeting will be held. Ecology and Gardner Global will review available data and an updated conceptual site model and discuss the content and organization of the Draft RI Report.

Gardner Global shall compile the results of all Site investigation(s) into an Agency Review Draft RI Report. The scope of the Draft RI Report will be the entire Site. Gardner Global shall submit the Agency Review Draft RI Report electronically in Word (.doc) and Adobe (.pdf) formats to Ecology for review and comment.

After incorporating Ecology's comments on the Agency Review Draft RI Report, Gardner Global shall prepare a Public Review Draft RI Report and submit to Ecology for distribution and public comment. Electronic survey data for monitoring locations, electronic lab data, and maps of contaminant distribution shall also be provided for both the Agency Review Draft RI Report and Public Review Draft RI Report either in the report or as attachments. The RI Report will not be considered Final until after a public review and comment period and Ecology approval. The number and type of document (electronic, print copy, etc.) will be determined by the Ecology Project Coordinator.

If the data collected during this investigation is insufficient to define the nature and extent of contamination, and/or to select a cleanup action an additional phase of investigation shall be conducted to define the extent of contamination. The scope and schedule of any such

additional necessary assessment will be discussed with and approved by Ecology, and may be performed contemporaneously with other remedial activities.

**TASK 3. INTERIM ACTIONS (if required)**

PLP will implement interim actions in accordance with WAC 173-340-430 and the PPCD, and will be designed in a manner that will not foreclose reasonable alternatives for any final cleanup action that may be required.

As detailed in the AO, if required by Ecology, or if proposed by Gardner Global and approved by Ecology, Gardner Global will implement an interim action. Based upon information in the Agency Review Draft RI Report, interim action(s) may be needed to expedite control of releases to environmental media pursuant to WAC 173-340-430.

If an interim action is to be performed, Gardner Global will prepare and submit for Ecology approval an Agency Review Draft Interim Action Work Plan (IAWP) with detail commensurate with the work to be performed. The Agency Review Draft IAWP shall include, as appropriate:

- Description of the interim action including its purpose, general requirements, and relationship to the (final) cleanup action (to the extent known),
- Summary of relevant RI/FS information, including at a minimum existing site conditions and alternative interim actions considered,
- Information regarding design and construction requirements, including a proposed schedule and personnel roles and responsibilities,
- Compliance Monitoring Plan,
- SAP/QAPP/Inadvertent Discovery Plan,
- Permits required.

Gardner Global will also submit a copy of the Health and Safety Plan for the project. Gardner Global will be responsible for complying with the State Environmental Policy Act (SEPA) Rules (WAC 197-11) including preparing and submitting an environmental checklist for the interim action, and will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

Gardner Global shall prepare the Agency Review Draft IAWP and submit them to Ecology for review. Gardner Global shall incorporate Ecology's comments and then prepare the Public Review Draft IAWP and submit them to Ecology. After a public notice and comment period for the Public Review Draft IAWP (and SEPA determination), Ecology will approve the IAWP (if appropriate) and Gardner Global shall prepare the Final IAWP. Once approved by Ecology, Gardner Global will implement the interim action according with the approved schedule. The Ecology Project Coordinator will determine the number and type of document (electronic, print copy, etc.)

Upon successful completion of the work, an Agency Review Draft Interim Action Report will be prepared as a separate deliverable. Gardner Global shall prepare the Agency Review Draft Interim Action Report and submit to Ecology for review and approval. After incorporating Ecology's comments on the Agency Review Draft Interim Action Report and after Ecology approval, Gardner Global shall prepare the Final Interim Action Report and submit to Ecology. The Ecology Project Coordinator will determine the number and type of document (electronic, print copy, etc.)

#### **TASK 4. FEASIBILITY STUDY**

Gardner Global shall use the information obtained in the RI to prepare a Feasibility Study (FS) that meets the applicable requirements of WAC 173-340-350(8) and outlined in Ecology's FS Checklist Publication No. 16-09-007, May 2016. The FS will evaluate remedial alternatives for site cleanup, consistent with MTCA requirements to ensure protection of human health and the environment by eliminating, reducing, or otherwise controlling risk posed through each exposure pathway and migration route.

Prior to beginning the FS, a Key Project Meeting will be held to review applicable or relevant and appropriate requirements, potential remedial alternatives, and establish points of compliance.

The Agency Review Draft FS will provide detailed analyses of each remedial alternative. The remedial alternatives will be evaluated for compliance with the requirements of WAC 173-340-360 (2), and assessed for the criteria in WAC 173-340-360 (3):

- Protectiveness
- Permanence
- Cost-Effectiveness
- Long-Term Effectiveness
- Management of short-term risk
- Technical and administrative implementability
- Consideration of public concern

The remedial alternative that is judged to best satisfy the evaluation criteria will be identified. Justification for the selection will be provided, and the recommended remedial alternative further developed, in the FS Report.

Gardner Global shall prepare the Agency Review Draft FS and submit to Ecology for review. After addressing Ecology's comments on the Agency Review Draft FS, Gardner Global shall prepare the Public Review Draft FS and submit to Ecology for distribution and public comment. The FS will not be considered Final until after a public review and comment period and Ecology's approval. The number and type of document (electronic, print copy, etc.) will be determined by the Ecology Project Coordinator.

#### **TASK 5. SEPA COMPLIANCE**

Gardner Global shall be responsible for complying with the State Environmental Policy Act (SEPA) Rules including preparing and submitting an environmental checklist. If the result of the threshold determination is a determination of significance (DS), Gardner Global shall be responsible for the preparation of Draft and Final environmental impact statements. Gardner Global shall assist Ecology with coordinating SEPA public involvement requirements with MTCA public involvement requirements whenever possible, such that public comment periods and meetings or hearings can be held concurrently.

#### **TASK 6. PUBLIC PARTICIPATION**

Gardner Global shall support Ecology in presenting the Public Review Draft RI/FS Report, Draft Cleanup Action Plan, and the SEPA evaluations at public meeting(s) or hearing(s) as required. Gardner Global will assist Ecology with presentations at any additional meetings or hearings that might be necessary for SEPA compliance or as part of the Public Participation Plan.

After the public comment periods are completed and if more than 10 comments are received, Gardner Global shall prepare an Agency Review Draft Responsiveness Summary that addresses public comments, and submit to Ecology for review and approval.

After addressing Ecology's comments and after Ecology approval, Gardner Global shall prepare the Final Responsiveness Summary and submit to Ecology for distribution. The Ecology Project Coordinator will determine the number and type of document (electronic, print copy, etc.)

#### **TASK 7. CLEANUP ACTION PLAN**

Following completion of the Final RI/FS report, Gardner Global shall prepare a draft Cleanup Action Plan (CAP) in accordance with WAC 173-340-380 for Ecology review and public comment. The Agency Review preliminary DCAP shall include a general description of the proposed remedial actions to address the contamination present on the Site, cleanup standards developed from the RI/FS and rationale regarding their selection, a schedule for implementation, description of any institutional controls proposed, and a summary of applicable local, state, and federal laws pertinent to the proposed cleanup actions. The Parties intend that Ecology will select a final Site remedy in a final CAP and that Gardner Global will conduct remedial actions pursuant to and consistent with the CAP.

Gardner Global will submit an Agency Review preliminary DCAP for Ecology's review and approval.

After receiving Ecology's comments on the Agency Review preliminary DCAP, if any, Gardner Global shall revise the preliminary DCAP to address Ecology's comments and submit the Public Review DCAP to Ecology. The Ecology Project Coordinator will determine the number and type of document (electronic, print copy, etc.)

The Parties understand that the Site consists of multiple parcels and ROW's and that Gardner Global will likely seek to redevelop parcels at the Site in phases. Ecology may authorize parcel-

specific redevelopment and remedial action where such redevelopment and remedial action implements the CAP for that portion of the Site, the redevelopment and remedial action is consistent with, will not preclude, complicate, or render more expensive, the final Site-wide cleanup action in the CAP, and the redevelopment and remedial action will not result in re-contamination at the Site.

Gardner Global shall furnish all personnel, materials, and services necessary for, or incidental to, preparing plans and reports, and the implementation of the Cleanup Action. Submittals of deliverables shall be prepared in accordance with WAC 173-340-840, General Submittal Requirements.

Upon submittal of the Final CAP, Gardner Global shall implement the cleanup action according to WAC 173-340-400. The first deliverable of the CAP will be an Engineering Design Report (EDR). The EDR will outline the engineering concepts, design criteria, studies, calculations, and planning needed to support final design and construction. The EDR is included as a deliverable in the Schedule below to initiate implementation of the CAP.

## SCHEDULE OF DELIVERABLES

The schedule for this Scope of Work is presented below. If the date for submission of any item or notification required by this Schedule of Deliverables occurs on a weekend, state or federal holiday, the date for submission of that item or notification is extended to the next business day following the weekend or holiday.

<b>Deliverables</b>	<b>Completion Times</b>
Progress Reports	10 <sup>th</sup> of every month, beginning after the first full month after the effective date of this PPCD.
Draft RI Work Plan	60 calendar days following the effective date of this PPCD.
Final RI Work Plan	30 calendar days after Ecology's written request to finalize
Obtain permits for drilling and sampling in rights-of-way	Prior to beginning RI field work
Agency Review Draft RI Report	90 calendar days following after final laboratory report is received by Gardner Global
Public Review Draft RI Report	45 calendar days following approval of Agency Review Draft RI Report
Draft Interim Action Work Plan (if required)	60 days following request by Ecology for prepare the Interim Action Work Plan
Agency Review Draft FS Report	90 calendar days following Ecology approval of Public Review Draft RI Report
Public Review Draft FS Report	45 calendar days following approval of Agency Review Draft FS Report
Draft Preliminary Cleanup Action Plan (CAP)	90 calendar days following Ecology approval of Agency Review Draft FS Report.

Public Review Draft CAP	30 calendar days following Ecology approval of Draft Preliminary CAP
SEPA checklist	As appropriate
Agency Review Responsiveness Summary	30 days following completion of public comment period
Final Responsiveness Summary	30 days following Ecology approval of Agency Review Responsiveness Summary
Final RI/FS and CAP	60 days following submittal of the Final Responsiveness Summary
Draft Engineering Design Report as defined in the CAP	120 days following Ecology receipt of the Final CAP, or as defined in the CAP Schedule